

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 476

September 29, 1995, 3:02 p.m.  
Page S-14617 Temp. Record

## COMMERCE-JUSTICE-STATE APPROPRIATIONS/Legal Services Corporation

**SUBJECT:** Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1996 . . . H.R. 2076. Gramm motion to table the Domenici amendment No. 2819 to the committee amendment on page 26, line 18.

### ACTION: MOTION TO TABLE FAILED, 39-60

**SYNOPSIS:** As reported, H.R. 2076, the Departments of Commerce, Justice, and State, the Judiciary, and related agencies appropriations bill for fiscal year 1996, will provide a total of \$26.525 billion in new budget authority, which is 1 percent less than provided for fiscal year (FY) 1995, and which is \$4.634 billion less than the Administration requested. The Justice Department and the Judiciary will receive substantial increases in funding, and the Commerce Department, the State Department, and related agencies will receive substantial reductions in funding.

**The Domenici amendment** would provide \$340 million for the Legal Services Corporation (LSC; \$400 million was provided last year; the bill will provide \$0 for the LSC; instead, it will provide \$210 million in block grants to the States and Indian tribes to provide legal assistance to the poor). Of the \$340 million, \$115 million would be fenced until the commencement of a competitive system for awarding grants, which would be implemented by September 1, 1996. The LSC would establish the criteria to be used for giving grants under that system, which would not give preference to former grant recipients, and which would take into consideration any past failure by grant applicants to use grants in compliance with LSC policies, practices, and restrictions. Grants under this Act would be distributed equally by geographic regions as defined by the LSC. Grants under this Act would be given to individuals, qualifying non-profit entities, State and local governments, and substate regional planning agencies. Recipients of grants under this Act would have 19 separate restrictions placed on their use of grant funds and other funds that they might have, including that funds could not be used: for activities related to redistricting; for attempting to influence any government regulation; for attempting to influence legislation or referendums; for class action suits; for initiating actions without disclosing the identities of the plaintiffs; for representing illegal aliens; for conducting training in political advocacy or other political activities; for litigation relating to abortion; for litigation on behalf of prisoners; for activities relating to welfare reform; for accepting employment as a result

(See other side)

YEAS (39)			NAYS (60)			NOT VOTING (1)	
Republicans (38 or 70%)	Democrats (1 or 2%)		Republicans (16 or 30%)	Democrats (44 or 98%)		Republicans (0)	Democrats (1)
Abraham	Helms	Byrd	Bond	Akaka	Johnston		Glenn <sup>2</sup>
Ashcroft	Hutchison		Chafee	Baucus	Kennedy		
Bennett	Inhofe		Cohen	Biden	Kerrey		
Brown	Kempthorne		D'Amato	Bingaman	Kerry		
Burns	Kyl		Domenici	Boxer	Kohl		
Campbell	Lott		Gorton	Bradley	Lautenberg		
Coats	Mack		Hatfield	Breaux	Leahy		
Cochran	McCain		Jeffords	Bryan	Levin		
Coverdell	McConnell		Kassebaum	Bumpers	Lieberman		
Craig	Murkowski		Lugar	Conrad	Mikulski		
DeWine	Nickles		Packwood	Daschle	Moseley-Braun		
Dole	Pressler		Santorum	Dodd	Moynihan		
Faircloth	Roth		Snowe	Dorgan	Murray		
Frist	Shelby		Specter	Exon	Nunn		
Gramm	Simpson		Stevens	Feingold	Pell		
Grams	Smith		Thompson	Feinstein	Pryor		
Grassley	Thomas			Ford	Reid		
Gregg	Thurmond			Graham	Robb		
Hatch	Warner			Harkin	Rockefeller		
				Heflin	Sarbanes		
				Hollings	Simon		
				Inouye	Wellstone		

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

of giving unsolicited advice to non-attorneys; or for defending a person being evicted for selling illegal drugs. Grant recipients would be permitted to lobby for more money. The amendment's cost would be offset, including by making the following spending cuts: \$210 million from the elimination of the civil legal assistance block grant; \$49 million from Federal Bureau of Investigation (FBI) construction; \$25.1 million from general legal activities of the Justice Department; \$25 million from the Court of Appeals, District Courts; \$21 million from the Foreign Affairs Reorganization Transition Fund; \$11.1 million from U.S. Attorneys; and \$11 million from the Bureau of the Census.

Debate was limited by unanimous consent. Following debate, Senator Gramm moved to table the Domenici amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Following the vote, the amendment was adopted by voice vote.

**Those favoring** the motion to table contended:

Federal law enforcement needs are underfunded. In the past several years, efforts have been made to address the shortfall. This bill will continue those efforts. The Legal Services Corporation, from its inception, has been a renegade, unaccountable agency that has pursued a far-left social agenda instead of providing legal representation for poorer Americans as originally intended. The bill will totally defund the Legal Services Corporation and will provide a lesser amount as block grants to the States to provide legal services to the poor. The remainder will be used to increase Federal law enforcement funding. The Domenici amendment would eliminate the block grants and cut law enforcement funding in order to restore funding for the LSC to within 15 percent of the amount it received last year. The amendment would place restrictions on the LSC, but the organization's autonomous structure, and thus its ability to ignore those restrictions, would remain. We oppose this amendment both because we oppose cutting law enforcement funding and because we think the proposed LSC restrictions would utterly fail.

We are especially troubled by the cuts in law enforcement funding. First, this amendment would reduce the appropriation for general legal activities of the Justice Department by \$25 million. While it is true that this bill will provide more than \$25 million more for those activities than was provided for FY 1995, it is also true that even more is needed. The Administration asked for \$10 million more than provided in this bill. Our Federal courts have large backlogs; there is no question that the need for more funding exists. To put this particular cut in very concrete terms, agreeing to the Domenici amendment would mean that we would have 200 fewer prosecutors in America next year to bring organized crime figures, drug dealers, child pornographers, and terrorists to justice.

Another cut in this amendment that merits special condemnation is the \$49 million cut it would make of funds for the FBI Academy. A few short weeks ago, the Senate passed an anti-terrorism bill that authorized the construction of this Academy to replace the FBI's current antiquated training facilities, which train 1,125 Federal, State, and local law enforcement officers each year. A few short weeks ago, after the terrorist bombing in Oklahoma, Senators were very vocal in their desire to provide adequate funding for Federal law enforcement. Now many Senators do not see the urgency; the Director of the FBI, both in sworn testimony and in a recent letter to us, has requested this money, but our colleagues tell us they think we can wait until next year.

Interestingly, this amendment would not be entirely funded by offsets. Instead, the need for offsets for one-third of its costs would be avoided by using the familiar forward-funding budget gimmick. This technique forces the scoring of the expenditures into the next fiscal year. Frankly, we are rather surprised that the Chairman of the Budget Committee, who has put forth such a commendable balanced budget plan, would resort to this tactic to fund his proposed amendment.

Looking at the offsets that were chosen, and the use of a budget gimmick by one of the most fiscally responsible Senators ever to serve, one would suppose that the purpose for which funds were being raised was of exceptional value. One would be dead wrong. The Domenici amendment would provide funding for the LSC, which almost from its inception has strayed from its mission of providing needed civil legal services to the poor. That mission is indeed a noble mission. Poor people should have access to representation when they are in probate court, when they have property disputes, when they are in custody battles, or when they are involved in similar civil proceedings. If the LSC worked as intended, we would not have proposed defunding it in this bill. For years we have fought to reform it, and for years our efforts have failed. We have concluded that those reforms have failed because the structure of the LSC is irredeemably flawed. The only workable solution, which is followed by this bill, is to start all over.

The LSC began as a Great Society program under President Johnson. Originally, it was under the control of the Department of Health and Human Services. In 1974, President Nixon set the LSC loose as an autonomous Federal corporation, freeing it from all Federal accountability standards that apply to other Federal agencies. The only control that minimally exists is that the Senate confirms LSC Directors, who dispense grants. One of the LSC's debut performances was to use Federal funds to haul Vietnam protestors to the Capitol, where they could chant delightful bits of doggerel at Senators like, "Hey, hey, go away; how many did you kill today?" Those of us who were here at the time did not appreciate this use of taxpayer dollars which we had appropriated for the benefit of destitute Americans, and we enacted amendments to put a stop to it. Thus began a sorry and failed history of trying to fix by amendment the abuses that are committed using LSC funds, year after year, by the same grantees.

Interestingly, supporters of the Domenici amendment have not exactly offered ringing endorsements of the LSC. They have stated, without offering proof, that most of the LSC's work is defensible, but they have joined us in condemning the abuses that have occurred. Even if they are correct, and the majority of the funds are not being spent challenging welfare reform laws, asserting the

SEPTEMBER 29, 1995

VOTE NO. 476

rights of children to disown their parents, challenging parental notification laws for abortion, fighting to stop the eviction of drug dealers from subsidized housing, challenging redistricting plans, engaging in electioneering, or engaging in many of the other common objectionable activities of which everyone admits the LSC is guilty, they are missing the point. That point is that LSC grantees have consistently pursued an extremely radical, far-left agenda, and in doing so have shown an utter, dishonorable contempt for the democratic process. They have deliberately twisted and flouted the law, and have abused the perversities of the judicial process to escape accountability for their disreputable, illegal acts.

These charges our strong, but they are provable. The horror stories are legion: to protect a cocaine dealer convicted of having 66 vials of crack cocaine from eviction, an LSC grantee had her file a chapter 7 bankruptcy which gave her an automatic stay; an LSC grantee represented a 16-year-old, who had been convicted of numerous criminal offenses, in his custody battle over a child he had fathered by raping a 13-year-old girl; an LSC grantee in Florida represented two homosexuals in their fight to overturn Florida's law that prohibits homosexuals from adopting children; another LSC grantee in Florida sued for the right of children to terminate their parents' rights over them; in North Dakota, an LSC grantee successfully argued that State laws requiring welfare mothers to identify the fathers so they can be made to provide child support are illegal; an LSC grantee organized civil unrest at Attica State Prison in New York to commemorate the 1971 riots there; an LSC grantee in 1992 sued for the right of the criminally insane to vote; in 1993, an LSC grantee sued to obtain Social Security retirement benefits for an illegal alien who had been deported twice for criminal activity; another LSC grantee sued a tomato farmer for the injuries sustained by a worker who reached beneath a moving truck; in 1993, an LSC grantee sued to obtain disability benefits for a 44-year-old man based on his alcoholism and anti-social behavior; and in a 1991 case an LSC grantee sued Seattle to force it to provide bilingual education.

These cases only scratch the surface. It is instructive, for example, that every single welfare reform effort attempted by States in recent years has been challenged, using Federal funds, by LSC grantees. Sometimes, when these LSC grantees have cast about for clients to serve as front men in their efforts to overturn laws, they have succeeded, at tremendous financial and societal costs for the voters who elected the people who passed those overturned laws. The long list of prohibited activities that is in the Domenici amendment clearly demonstrates that our colleagues are fully cognizant of the problems that have occurred. However, if one believes that passing a law ordering an LSC grantee not to take a certain action will actually result in that LSC grantee not taking that action, then, one is pretty gullible.

Ever since the LSC has been created it has deliberately and flagrantly broken laws restricting its activities. Our colleagues tell us that restrictions have not been enacted before now--they are wrong. When the LSC was created in 1974, restrictions were written into the statute. The LSC, since it has been founded, has been barred from engaging in political activities, from handling abortion cases, and from handling certain other controversial issues. Terrance Wear, who was president of the LSC during portions of the Reagan and Bush Administrations, wrote to us to describe the extent of the problem. In his letter, he wrote that when he ordered LSC grantees to stop handling abortion cases, they refused, and then sued the Government for trying to enforce the law. Their suits dragged on for years, due to the LSC lawyers ability to twist the judicial process to achieve delays. Similarly, in 1989, Mr. Wear ordered LSC grantees to stop interfering in redistricting activities, because their efforts to gerrymander districts in favor of the election of far-left liberals clearly violated the law prohibiting political activities. An LSC grantee, Texas Rural Legal Aid, sued, and dragged the case out until the Clinton Administration came in and let it off the hook.

The LSC is a fanatical, disreputable organization with absolutely no respect for the law. Passing legislative riders restricting it, which in many cases are repetitions of restrictions that are already in place, will not work. We do not need to provide funding for lawyers who are interested in pursuing interests of poor people as a class but are not interested in representing their individual needs. We think that if these lawyers bothered to ask poor people, most of them would not be supportive of many of their efforts, such as to keep drug dealers and violent criminals in public housing projects, and to advise divorce as a means of increasing welfare payments. Too often, trendy issues, or blatantly political issues, are pursued, and representation is denied to average, needy Americans who may need help due to a boring matter like a consumer complaint.

The problem is that LSC grantees will not obey the law. They will do as they please, will sue the Government if challenged, and will keep matters tied up in court for years. The only feasible solution that we can see is to kill the program and give grant money directly to the States. We hope that they will give funds to individual lawyers for individual clients, with strict accountability standards, but considering Congress' record with the LSC, we are not really in any position to give advice.

In summary, the Domenici amendment would take money away from law enforcement programs that greatly need it and would give it, with restrictions, to a renegade, radical organization that has proven consistently that it has no respect for the law. It is hard to think of a worse proposal. We strongly urge our colleagues to vote against this amendment.

**Those opposing** the motion to table contended:

Argument 1:

Our colleagues have mentioned that we have not denied that LSC grantees have engaged in objectionable activities; in response, they have not denied that LSC grantees have engaged in highly meritorious activities. Our colleagues are only looking at one side

of the coin. We, at least, admit the abuses and want to stop them; our colleagues, though, have failed to admit the successes of this program. The vast majority of LSC cases are noncontroversial. Most LSC grantees do exactly what they are supposed to do by law with their grants. Our colleagues are absolutely right to be outraged over the persistent and blatant abuses that have occurred in this program, but they must keep in mind that those abuses are not the fault of the people for whom this program was enacted. We will eagerly join our colleagues in any efforts they may wish to take to stop and punish those grantees who have flouted the law, but we will not support any efforts that will harm the people who are meant to benefit from this program.

No Senator should be under the illusion that this bill is not likely to harm poor people. It will eliminate every penny of funding for the LSC, and then will provide half of the former amount of funding for the LSC as a block grant to the States. However, only a quarter of that block grant funding will be spent in fiscal year 1996. In other words, the Federal Government's commitment to meeting the civil legal needs of needy Americans will be cut by seven-eighths, or 87.5 percent, in the coming fiscal year. Do our colleagues suppose that poorer Americans will have less need for representation next year? Will there be a moratorium on child custody cases, on eviction notices, on consumer fraud, and on similar civil legal matters next year of which we are unaware? Perhaps the States will do a much better job with more limited funding; perhaps there is really as much abuse in the LSC as our colleagues imagine. However, these are suppositions, and to our minds they are risky suppositions, and we should not act on them considering the consequences if we are wrong.

For some Senators, it seems that the possibility that some Americans will lose representation in civil court is a risk worth taking in order to stop LSC abuses. These Senators have no confidence in Congress' ability to stop the LSC from breaking the law. We think they are overlooking one very important factor. To put it very bluntly, Republicans now control both Houses of Congress for the first time in 50 years. For the first time, it will be possible to enact restrictions. In past years, Democratic Members were not really all that upset that the LSC was using taxpayer funds to subvert laws in defense of liberal principles that did not have the support of the American people and could therefore not be enacted into law. Similarly, they did not mind when LSC grantees engaged in gerrymandering, lobbying, or other blatantly political activities on behalf of liberal Democrats. When they controlled one or both houses of Congress, Democrats were able to block reform efforts. With no real funding pressure coming from Congress, LSC grantees knew that they had their champions, and they knew what they could get away with. Now that Republicans hold the purse strings in both houses, though, we think LSC grantees will realize that a new day has dawned. When they see this Congress enact tough restrictions, they will know that they will be required to obey those restrictions or they will not get grants.

To offset this spending, the Domenici amendment would reduce funding for certain law enforcement accounts. Our colleagues talk about these reductions as "cuts;" we note they are being inconsistent. They have joined us in many efforts over the years to restrain the growth in spending of numerous programs. When we have made those joint efforts, we have often been accused of making spending cuts, and we have replied that providing for a smaller increase in spending than our colleagues' hoped for was not a cut. Similarly, the Domenici amendment would only limit the rate of growth in these law enforcement accounts. More money would still be provided than last year. In our opinion, this bill padded these law enforcement accounts as an excuse to cut funding for the LSC. For example, the \$49 million that will be provided for the FBI Academy could not possibly be spent this year, because planning for that facility has barely begun. At most, \$5 million could be spent.

The LSC was started by President Nixon in the finest of Republican traditions. It is predicated on the Republican principle that America is about equal opportunity, not equal results. A rich man, faced with a lawsuit, will hire a battery of lawyers to defend him. He will have the best possible legal representation before he loses his assets, is evicted, or otherwise suffers from losing a civil suit. Poorer Americans should have equal protection under the law. In a criminal case, no matter how minor, the right to a lawyer is guaranteed. The right to a lawyer in a civil trial has not yet been recognized, but we think we should do what we can to make sure that lawyers are provided because in many civil trials the jeopardy is far greater than it is in criminal trials. For example, losing custody of one's child to a State is a much greater loss than receiving a suspended jail sentence. We are very proud to stand in defense of providing civil legal assistance to those Americans who cannot afford representation. We believe in equal rights before the law, and thus strongly urge our colleagues to vote in favor of the Domenici amendment.

#### Argument 2:

The vote on this amendment is a close call for us. We do not want abuses, nor do we want to see poor people without legal representation in civil cases. At this point, we see both the good and the bad that comes from the LSC. The bill will do away with the LSC entirely and give block grants to the States, on the hope that the States will retain the good aspects of the program and will do away with all the shocking abuses. The States may fail--we may lose the good aspects of the program. The Domenici amendment would give us an alternative--it would unquestionably retain the parts of the LSC program that work, and it would enact restrictions on the abuses. The amendment is a rider, which would have effect for 1 year. We see it as a trial program to see if the abuses can be reined in. We are willing to vote for this trial program.